

**REGISTRATION FORM  
FOR ONLINE  
INVITATION FOR BIDS (IFBs)**

- Companies interested in participating in this solicitation must first register participation by completing and submitting this Registration Form.
- This form must be e-mailed to [Connie.Chun@notes.k12.hi.us](mailto:Connie.Chun@notes.k12.hi.us) or faxed to (808) 675-0133 prior to the deadline for bid submittal.
- Failure to register may result in the Company not receiving any addenda and/or other procurement notices; the Company's offer may therefore be rejected and not considered for award.
- After registration, Companies shall then complete and submit to the DOE **a hard copy of the bid**, in accordance with the instructions contained in the solicitation.

IFB Number:	IFB D11-024
IFB Title:	Computer Workstations for Pearl Harbor Kai ES
IFB Deadline:	August 11, 2010
Name of Company:	
Mailing Address:	
Name of Contact Person:	
Contact's Email Address:	
Telephone No. / Facsimile No.:	

DEPARTMENT OF EDUCATION  
PROCUREMENT & CONTRACTS BRANCH

July 20, 2010

INVITATION FOR BIDS

NO. IFB D11-024

SEALED BIDS

TO

FURNISH AND DELIVER

COMPUTER WORKSTATIONS

FOR

PEARL HARBOR KAI ELEMENTARY SCHOOL

will be received up to and opened at 2:00 p.m. (HST)

on

August 11, 2010

in the DOE Procurement & Contracts Branch (hereafter "PCB"), Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797. Bids received after the established deadline will not be considered.

Request(s) for pre-qualification of acceptable products and specifications literature will be received up to **4:30 p.m. on July 28, 2010** at the DOE PCB at the above-listed location or via fax at 808-675-0133.

Questions relating to this bid solicitation may be directed to Ms. Connie Chun at telephone (808) 675-0130, facsimile (808) 675-0133, or via email at [Connie.Chun@notes.k12.hi.us](mailto:Connie.Chun@notes.k12.hi.us).

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Name of Company

**FURNISH AND DELIVER  
COMPUTER WORKSTATIONS  
FOR PEARL HARBOR KAI ELEMENTARY SCHOOL  
IFB D11-024**

Chief Procurement Officer  
State of Hawaii, Department of Education  
Honolulu, Hawaii 96813

To Whom It May Concern:

The undersigned has carefully read and understands the terms and conditions specified in the Specifications, Special Conditions, and General Conditions attached hereto and hereby submits the following offer to perform the work specified herein, all in accordance with the true intent and meaning thereof. The undersigned further understands and agrees that by submitting this offer, 1) he/she is declaring his/her offer is not in violation of Chapter 84, Hawaii Revised Statutes, concerning prohibited State contracts, and 2) he/she is certifying that the price(s) submitted was/were independently arrived at without collusion.

The undersigned represents: **(Check ☒ one only)**

- ☐ A **Hawaii business** incorporated or organized under the laws of the State of Hawaii; **OR**
- ☐ A **Compliant Non-Hawaii business** not incorporated or organized under the laws of the State of Hawaii, but registered at the State of Hawaii Department of Commerce and Consumer Affairs Business Registration Division to do business in the State of Hawaii.

State of incorporation: \_\_\_\_\_

Bidder is: ☐ Sole Proprietor ☐ Partnership ☐ Corporation ☐ Joint Venture ☐ Other

Federal I.D. No.: \_\_\_\_\_ Hawaii General Excise Tax License I.D. No.: \_\_\_\_\_

Payment address (other than street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Business address (street address): \_\_\_\_\_

City, State, Zip Code: \_\_\_\_\_

Date: \_\_\_\_\_

Respectfully submitted:

Telephone No.: \_\_\_\_\_

\_\_\_\_\_  
Authorized (Original) Signature

Fax No.: \_\_\_\_\_

\_\_\_\_\_  
Name and Title (Type or Print)

E-mail Address: \_\_\_\_\_

\_\_\_\_\_  
**Exact Legal Name of Company (Bidder)\***

\*If Bidder is a "dba" or a "division" of a corporation, furnish the exact legal name of the corporation under which the awarded contract will be executed: \_\_\_\_\_

The following bid is hereby submitted:

Description	Manufacturer's Make and Model No.	Quantity	Unit Bid Price	Total Bid Price
Double Computer Workstations (Bretford Connections SmartDeck Work Center Model #35SD27 or pre-approved equal)		58 each	\$	\$

In addition to meeting legal and any other requirements of this solicitation, bidder must meet these qualifications to be considered for award.

1. Authorized distributor

At the time of bidding, bidder shall be an authorized distributor or reseller of furniture bid with at least five (5) years of previous experience in that capacity. As evidence of this, bidder may be requested to provide documentation from the manufacturer which verifies bidder's status as an authorized distributor.

2. Office Location/Personnel

At the time of bidding and throughout the contract period, bidder shall have an office in the State of Hawaii from where business is conducted and from where the company is accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable. Bidder must have a warehouse/ storage facility and service/delivery personnel to deliver, adjust and/or repair equipment. The facility location(s), contact person(s), and contact information shall be stated below.

Bidder shall designate at least one (1) employee as the DOE point of contact (POC) for this contract. This individual shall be based in Hawaii and available during regular business hours, Monday – Friday excluding holidays, and shall be capable of answering questions, resolving problems, and providing sales, ordering, and follow-up assistance.

Bidder shall provide the following information regarding its **Oahu-based Facility** and POC:

Name \_\_\_\_\_

Address \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Point-of-Contact \_\_\_\_\_

Email Addresses \_\_\_\_\_

## SPECIFICATIONS

### QUALITY OF FURNITURE

Furniture delivered under this contract shall be new and of the best quality or its respective kind.

Furniture delivered shall be free from defects that may render it unfit for use. The Contractor shall immediately remove damaged or rejected products from the site and replace them with products of the required quality. Failure to replace or to remove any rejected product shall not relieve the Contractor from the responsibility imposed upon him by the contract. No payment, whether partial or final, shall be construed to be an acceptance of defective work.

In the event of damage due to defect or freight damage, replacement furniture shall be offered until the permanent furniture is received. Replacement or repair of damaged/defective furniture shall be completed within thirty (30) calendar days from date of non-acceptance or rejection.

The DOE may, at any time and by written order, stop work or delivery of specific products or equipment not conforming to these specifications. The stop order shall not relieve the contractor of the obligation to complete the contract within the contract time limits, nor shall it in any way terminate, cancel or abrogate the contractor or any part thereof.

All finish shall be done at the factory. No field finishing shall be permitted except slight retouching. All materials of every description shall show no traces of machine or mill marks. All materials for finishing shall be the best of their respective kinds.

### WARRANTY

It is hereby understood and agreed that PRODUCT WARRANTY shall be guaranteed and furnished by the Contractor.

**Warranty Period.** Workstations shall be guaranteed by the Contractor for a minimum period of ten (10) years from the date of acceptance.

**Product Guarantee:** During the warranty period, the Contractor shall provide all labor and materials, including but not limited to parts and travel costs, to replace or repair any product of defective workmanship and/or material, including but not limited to warping, buckling, cracking, or other defects not due to abuse or negligence on the part of the DOE & HSPLS.

### INSCRIPTION

Workstations delivered under this agreement must be labeled as described below. Appropriate labeling is necessary to track the workstation warranty period.

Vendor shall affix a decal to **each** workstation prior to delivery. The decal shall identify the vendor's name and month & year of delivery; identification shall be written, stamped, or stenciled with non-erasable ink or paint. The decal shall be placed in an inconspicuous (but not concealed) surface of each piece of furniture. **Failure to affix decal(s) on workstations delivered may result in delay of payment.**

The decals must comply with the following specifications:

1. Material and Size
  - a. Silver anodized aluminum 0.003 material with matte finish
  - b. Resistant to solvents and abrasion
  - c. Size: 2" x  $\frac{3}{4}$ " rectangle
  - d. Rounded corners
2. Pressure Sensitive Adhesive
  - a. Permanent pressure sensitive 3M adhesive or equivalent
  - b. Suitable for application on most surfaces

A sample of the polyester decal is available for inspection at PCB.

## DETAILED SPECIFICATIONS

### **ITEM NO. 18: DOUBLE COMPUTER WORKSTATION**

(Bretford Connections SmartDeck Work Center Model #35SD27 or pre-approved equal)

Workstation shall work with both laptop computers and tower computers and shall accommodate most flat screen monitors up to 19" diagonal. Monitor mounts inside the pop-up bin which also holds the keyboard and mouse. Monitor bin folds down to provide a flat work surface when not in use.

#### **Work Surface**

Work surface measures 66" wide by 24" deep. Minimum 1" thick construction featuring high-pressure laminate with 45 lb. density particleboard substrate and 3mm T-molding. Includes two monitor/keyboard doors, two CPU holders, and four keys. Work surface height-adjustable from 24" to 32" in 1" increments. Monitor door springs open using gas shock and latches into closed position when idle. Monitor/keyboard door lockable while in closed position.

#### **Base and Cord Management**

Leg assembly constructed from 18-gauge and 14-gauge steel tubing and is pre-assembled to bottom of work surface. 18-gauge steel modesty panel runs the width of the table and is pre-attached between legs and to underside of the work surface. Modesty panel doubles as cord management bin, also runs the width of the table and has 4" high front and is 1-1/2" deep. Steel mechanical bin is mounted to underside of work surface and powered by gas shock to raise monitor/keyboard door up when computers are in use.

#### **Monitor and Keyboard Bin**

Monitor mounts to underside of work surface door using VESA-compliant mounting holes built into the back of the case. Mounting holes must be located at or in the approximate center of the casing and may not be recessed more than 1/4" into the case.

#### **CPU Holder**

CPU tower leg harness shall be steel-constructed and leg-mounted. Two standard CPU tower holders adjustable to hold towers 6" to 11.5" wide

#### **Finish and Trim Package**

Laminate - slate grey frosted; Trim and Paint - slate grey.

## **SPECIAL CONDITIONS**

### **0. GENERAL INFORMATION**

#### **1. Addenda and Interpretations**

Discrepancies, omissions, or questions related to this solicitation shall be communicated in writing to the DOE via facsimile at (808) 675-0133 or e-mail to [Connie.Chun@notes.k12.hi.us](mailto:Connie.Chun@notes.k12.hi.us) for interpretation and must be received no later than ten (10) calendar days prior to the date fixed for bid opening.

Interpretation(s) if any and any supplemental instructions will be in the form of written addenda that will be made available to all prospective and pre-registered bidders prior to the date fixed for the opening of bids. Failure of any bidder to receive any such addenda or interpretations shall not relieve the bidder of any obligation under this solicitation. All addenda issued shall be incorporated into the resulting contract.

#### **2. Scope**

Work under this agreement shall consist of the furnishing and delivering of Double Computer Workstations for Pearl Harbor Kai Elementary School and shall be in accordance with these Special Conditions, the attached Specifications, and the General Conditions.

#### **3. Contract Administrator**

For purposes of this contract, the Principal of Pearl Harbor Kai Elementary School or his/her successor is designated Contract Administrator (CA). He/she can be contacted by telephone at 808-421-4245 or via facsimile at 808-421-4248.

The CA is responsible for:

- the terms, conditions, quantities, specifications, scope of services, other contract terms, and all decisions relating to the contract;
- monitoring the Contractor's work, documenting that Contractor maintains the required insurance coverage (if applicable), resolving contract disputes and discrepancies, evaluating the work of the Contractor, assuring the services or goods are delivered as required in the contract, and processing payment for services rendered; and
- notifying PCB in the event of change in scope of work, change in the performance period, increase or decrease in total compensation, and/or changes in any other contract terms.

The CA has designated Ms. Cathy Callejo as Point-of-Contact (POC) for this contract; the POC should be the initial contact on all matters related to this contract. Ms. Callejo can be contacted by telephone at 808-421-4245 ext 230 or via facsimile at 808-421-4248 or via e-mail at [Cathy\\_Callejo@notes.k12.hi.us](mailto:Cathy_Callejo@notes.k12.hi.us).

### **BIDDER INFORMATION**

#### **4. Bidder's Authority to Bid**

The DOE will not participate in determinations regarding a bidder's authority to sell a product or perform a service. If there are any questions or doubts regarding a bidder's right or ability to obtain and sell a product or to render a service, the bidder should resolve those issues prior to submitting a bid. If the bidder's offer meets specifications and is acceptable and the bid price submitted in the lowest bid, the contract will be awarded to that bidder.



## 5. Bidder Qualification

In addition to meeting legal and any other requirements of this solicitation, bidder must meet these qualifications to be considered for award.

### Authorized distributor

At the time of bidding, bidder shall be an authorized distributor or reseller of furniture bid with at least five (5) years of previous experience in that capacity. As evidence of this, bidder may be requested to provide documentation from the manufacturer which verifies bidder's status as an authorized distributor.

### Office Location

At the time of bidding and throughout the contract period, bidder shall have an office in the State of Hawaii from where business is conducted and from where the company is accessible to telephone calls for complaints or requests that need immediate attention. An answering service is not acceptable.

Bidder must have a warehouse/ storage facility and service/delivery personnel to deliver, adjust and/or repair equipment. The facility location, contact person(s), and contact information shall be stated on Offer Page OF-2.

### Personnel

Bidder shall designate at least one (1) employee as the DOE point of contact (POC) for this contract. This individual shall be based in Hawaii and available during regular business hours, Monday – Friday excluding holidays, and shall be capable of answering questions, resolving problems, and providing sales, ordering, and follow-up assistance.

Failure on the bidder's part to meet these requirements may result in rejection of bid. These requirements must remain in effect during the entire contract period. Failure to maintain these requirements may result in cancellation of award.

## 6. Pre-Approved Acceptable Products

The intent of the DOE is to purchase high-grade quality furniture and equipment. However, it is not the DOE's intent to exclude or limit the products of any responsible manufacturer, if such products are comparable to the quality, performance and/or characteristics required by the DOE.

**Bretford Connections SmartDeck Work Center Model #35SD27** has already been qualified as a "pre-approved product", therefore no further action is required and prospective bidders are free to bid on this product. Any other manufacturers of Double Computer Workstations are subject to pre-approval by the DOE prior to bid opening date, in accordance with the following procedure:

The following must be submitted to the DOE for evaluation:

1. product specifications,
2. manufacturer's literature; and/or
3. other information necessary to establish product quality.

The above-listed items must be submitted at or before **4:30 p.m., H.S.T., on July 28, 2010**. Submittals shall be submitted via one of the following three methods:

1. Via mail or courier to the DOE's PCB at Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797;
2. Via facsimile at number 808-675-0133; or
3. Via email at the following address: [Connie.Chun@notes.k12.hi.us](mailto:Connie.Chun@notes.k12.hi.us)

Prior to pre-qualifying a product, product samples or a DOE inspection of proposed products may be requested. Product brochures and other information submitted shall become the property of the DOE and may be retained for future reference.

The DOE will be the sole judge as to the comparable quality and acceptability of the proposed product and its decision shall be final. Any product determined by the DOE to be an acceptable equal will be listed in an addendum issued prior to the bid opening date.

If a bidder bids on a product without the DOE's pre-approval, the product shall not be considered for award.

## **7. Responsibility of Bidders**

Bidder is advised that if awarded a contract under this solicitation, bidder must furnish proof of compliance with the requirements of §103D-310(c), HRS as a pre-requisite to receiving a contract:

1. Chapter 237, tax clearance;
2. Chapter 383, unemployment insurance;
3. Chapter 386, workers' compensation;
4. Chapter 392, temporary disability insurance;
5. Chapter 393, prepaid health care; and
6. Chapter 103D-310(c), Certificate of Good Standing (COGS) for entities doing business in the State.

Bidder should refer to the "Award of Contract" provision for further information regarding the above-mentioned requirements.

## **BID PREPARATION**

**8. Offer Page OF-1.** Bidder is requested to submit the bid under the company's exact legal name as registered with the Department of Commerce and Consumer Affairs, if applicable, and to indicate the exact legal name in the appropriate space on Offer Page OF-1. Failure to do so may delay proper execution of the contract.

The authorized signature on the Offer Page OF-1 shall be an original signature in ink. If unsigned or if the affixed signature is a facsimile or a photocopy, the offer shall be automatically rejected unless accompanied by other material, containing an original signature, indicating the bidder's intent to be bound.

**9. Taxable Transaction.** Unless the HRS exempts a person from paying the applicable general excise tax, work to be performed under this solicitation is a business activity taxable under Chapter 237, HRS and Chapter 238, HRS, where applicable. Both out-of-state and Hawaii-based companies are advised that the gross receipts derived from this contract are subject to the general excise tax imposed by Chapter 237, HRS and, where applicable, to tangible property imported into the State of Hawaii for resale, subject to the 1/2% use tax imposed by Chapter 238, HRS.

The "State of Hawaii Information on Hawaii State Taxes Administered by the Department of Taxation", Publication-1 (Revised 2005) is included herein by reference and available online at <http://www.state.hi.us/tax/pubs/pub1.pdf>.

**10. Tax Exempt Transaction.** If, however, a bidder is a person exempt by the HRS from paying the general excise tax and therefore not liable for the taxes on this solicitation, bidder shall state its tax exempt status and cite the HRS chapter or section allowing the exemption.

For evaluation purposes, pursuant to §103D-1008, HRS, a tax-exempt bid submitted in response to a solicitation shall be increased by the applicable retail rate of general excise tax and the applicable use tax. Under no circumstance shall the dollar amount of the award include the aforementioned adjustment.

**11. Bid Price.** Unit bid prices shall be FOB destination and shall include but not be limited to the following:

- all applicable taxes, including the GET and applicable use tax, manufacturer and freight costs, warranty, and any other costs incurred to furnish products as specified herein;
- delivery of furniture to the destination specified on the order, completely assembled, adjusted, and placed as directed; and
- removal of all packaging debris and wrapping after delivery and installation.

**12. Authorized Distributor.** Bidder is requested to provide documentation from the manufacturer which verifies bidder's status as an authorized distributor.

**13. Bidder Information.** Bidder shall provide information regarding its office location and DOE's point-of-contact on the last of the Offer Pages.

**14. Manufacturer's Brand Name and Number.** Bidder shall indicate on the Offer Form the exact manufacturer's brand and model number of the workstation offered. Failure to do so or indicating remarks such as "as specified" may be sufficient grounds for rejection of the bid.

If any of the elements of product identification are missing on the Offer Form, the DOE will be unable to determine whether the bidder is a responsive bidder for the product offered. Bidder shall not be allowed to clarify product identification after bid opening. This is to ensure all bids are submitted under the same conditions with no opportunity for one bidder having an advantage over another bidder after exposure of bids.

It is understood and agreed that all accessories, fasteners, anchoring devices, protective finishes, trim pieces and any other devices required for complete installations shall be included in the bid price. The workstation as bid shall be complete and functional without the necessity of additional components.

**15. Offer Guaranty.** An offer guaranty (bid bond) is not required for this IFB.

## **BID SUBMITTAL**

### **16. Submission of Bid**

Bids shall be received at the DOE, PCB, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797, no later than the date and time stated on the cover page of the IFB. Timely receipt of offers shall be evidenced by the date and time registered by PCB's time stamp clock. Bids received after the deadline shall be returned unopened.

Submission of a bid shall constitute an incontrovertible representation by the bidder of compliance with every requirement of this IFB, and that the IFB documents are sufficient in scope and detail to indicate and convey reasonable understanding of all terms and conditions of performance of the work.

Before submitting a proposal, each bidder must:

1. examine the solicitation documents thoroughly for defects and questionable or objectionable material. Solicitation documents include this IFB, any attachments, plans referred to herein, and any other relevant documentation. Comments must be submitted in writing and received by the DOE, PCB by July 28, 2010. This will allow for issuance of addenda, if necessary, and also prevents against the opening of defective offers.
2. become familiar with State, local, and federal laws, ordinances, rules, and regulations that may in any manner affect cost, progress, or performance of the work.

3. prepare offer using the exact forms or reproductions of such forms as provided and as otherwise instructed by this IFB. Faxed or electronically submitted offers will not be accepted or acknowledged and will be automatically rejected.

The specifications, Special Conditions, General Conditions and other documents referenced in or attached to the offer shall be considered a part of the offer submitted, whether or not attached to the offer at the time of submission. Such documents shall not be altered in any way; any alterations so made by the bidder may result in rejection of the offer.

An offer that contains any omission, erasure, addition not called for, conditional offer or irregularity of any kind may be rejected. Corrections, if necessary, shall be made by lining out the materials to be corrected and by inserting the correction as close to the line-out as possible. Every such correction must be initialed by the person who signed the offer.

Bidder shall submit his signed offer, together with the offer security when required, in a sealed envelope. The envelope shall be clearly identified with the company's name and address on the upper left corner and the IFB number and due date on the lower left corner.

Bids will be received only until the hour and date set for the opening. Whether or not offers are opened exactly at the established deadline, none will be received after that time. Unless otherwise stated, bidder shall submit only one (1) offer. If more than one offer is submitted, all offers shall be rejected for that product.

#### **17. Certification of Independent Cost Determination**

By submitting a bid in response to this solicitation, bidder certifies as follows:

1. The costs in this IFB have been arrived at independently, without consultation, communication, or agreement with any other bidder, as to any matter relating to such costs for the purpose of restricting competition.
2. Unless otherwise required by law, the costs which have been quoted in this IFB have not been knowingly disclosed by the bidder prior to award, directly or indirectly, to any other bidder or competitor prior to the award of the contract.
3. No other attempt has been made or will be made by the bidder to indicate any other person or firm to submit or not to submit for the purpose of restricting competition.

#### **18. Acceptance of Bid**

Acceptance of bid, if any, will be made within sixty (60) calendar days after the opening of bids and the prices quoted by the bidder shall remain firm for the sixty day period.

### **BID EVALUATION**

#### **19. Disqualification of Offers**

Any one or more of the following causes will be considered as sufficient for disqualification of the offer:

1. Offer not signed by an authorized individual.
2. More than one offer from an individual, firm, corporation or joint venture under the same or different names.
3. Evidence of collusion among bidders or prices obviously unbalanced, lack of responsibility and cooperation as shown by past work, being in arrears on existing contracts with the State of Hawaii, or defaulting on previous contract(s).
4. Lack of proper equipment and/or sufficient experience to perform the work contemplated.
5. Offer received after specified deadline for opening of offers.

6. Evidence of any noncompliance with any applicable law, any unauthorized additions or deletions, of submission of conditional offer, incomplete offer, or irregularities of any kind which may make the offer incomplete, indefinite, or ambiguous as to its meaning.

## **20. Method of Award**

Award, if made, shall be to the responsive, responsible bidder submitting the lowest **Total Bid Price**.

## **21. Protest**

Pursuant to §103D-701, HRS and §126, HAR, "Legal and Contractual Remedies", an actual or prospective offeror who is aggrieved in connection with the solicitation or award of a contract may submit a protest. Any protest shall be submitted in writing to the DOE's Chief Procurement Officer, c/o the Procurement Office at the above address.

A protest shall be submitted in writing within five (5) working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest based upon the content of the solicitation shall be submitted in writing prior to the date set for receipt of offers. Further provided that a protest of an award or proposed award shall be submitted within five (5) working days after the posting of award of the contract.

The notice of award letter(s), if any, resulting from this solicitation shall be posted in the DOE Procurement and Contracts Branch at the Waipahu Civic Center, 94-275 Mokuola Street, Room 200, Waipahu, Hawaii 96797.

## **AWARD**

## **22. Contract Award**

Contractor receiving award(s) of \$25,000 or more shall be required to enter into a formal written contract. Performance bonds are not required for this IFB. Upon full execution of contract, the DOE will issue a fully executed copy to the Contractor. No work will be undertaken by the Contractor prior to the commencement date specified on the contract. The DOE is not liable for any work, contract costs, expenses, loss of profits, or any damages whatsoever incurred by the Contractor prior to official starting date.

## **23. Responsibility of Contractor**

Contractor shall furnish proof of compliance with these requirements of §3-122-112, HAR:

- Chapter 237, tax clearance;
- Chapter 383, unemployment insurance;
- Chapter 386, workers' compensation;
- Chapter 392, temporary disability insurance;
- Chapter 393, prepaid health care; and
- One of the following:
  1. Be registered and incorporated or organized under the laws of the State of Hawaii (hereinafter referred to as a "Hawaii business"); or
  2. Be registered to do business in the State of Hawaii (hereinafter referred to as a "compliant non-Hawaii business").

The following documents shall be submitted to the DOE, PCB as proof of compliance with the above-referenced requirements. Each certificate must be valid for 6 months from the most recent approval date.

1. DOTAX *Tax Clearance Certificate*

- instructions: <http://www.hawaii.gov/tax/2005/a6ins.pdf>
- form: <http://www.hawaii.gov/tax/2005/a6.pdf>;

2. DLIR *Certificate of Compliance* (regarding Unemployment Insurance, Workers' Compensation, Temporary Disability Insurance, and Prepaid Health Care);

- instructions & form: [http://hawaii.gov/labor/forms/LIR27\\_11-29-04.pdf](http://hawaii.gov/labor/forms/LIR27_11-29-04.pdf)

3. DCCA *Certificate of Good Standing* (sole proprietorships are not required to register with the DCCA and are therefore not required to submit this certificate)

- <http://www.ehawaii.gov/dcca/cogs/exe/cog.cgi>

**24. Hawaii Compliance Express.**

Alternately, instead of separately obtaining these certificates from each of the respective State departments, Contractors may choose to obtain a *Certificate of Vendor Compliance* through the Hawaii Compliance Express (HCE). This service allows Contractors to register online through a simple wizard interface at <http://vendors.ehawaii.gov/hce/splash/welcome.html>. The *Certificate of Vendor Compliance* provides current compliance status as of the issuance date, satisfies requirements of Chapter 103D-310(c), HRS, and is therefore acceptable for contracting purposes. Contractors that elect to use HCE services are required to pay an annual fee the Hawaii Information Consortium, LLC (HIC).

**25. Timely Submission of All Certificates**

The above certificates should be applied for and submitted to the DOE, PCB as soon as possible. If a valid certificate is not submitted on a timely basis for award of a contract, an offer otherwise responsive and responsible may not receive the award.

**26. Failure to Execute Award**

Failure to execute an award within ten (10) calendar days or such further time as the Superintendent may allow after the bidder has received the award letter shall be just cause for the annulment of the award. The Superintendent may award to the next lowest responsible bidder or may call for other offers, whichever is deemed to be in the best interest of the Department.

**27. Lack of Funds**

Pursuant to Section 103D-309, HRS, except in certain instances, no agreement entered into between the Department and the Contractor shall be binding or of any force unless the Superintendent certifies that there is an available unexpended appropriation or balance of an appropriation over and above all outstanding contracts sufficient to cover the amount required by the contract.

The Department reserves the right to increase or decrease the quantity of any product or to delete any product to be within available funds.

## **PERFORMANCE OF CONTRACT**

### **28. Delivery**

Delivery shall be completed within **45 calendar days** from issuance of Notice to Proceed to the following location:

Pearl Harbor Kai Elementary School  
1 C Avenue  
Honolulu, Hawaii 96818-4099  
Attention: Cathy Callejo

Upon delivery, Contractor shall ensure that a delivery receipt indicating the IFB and Contract number is signed and dated by the POC. Products shall not be delivered without prior notification. The Contractor shall be responsible for the products until delivered, installed and accepted by the POC.

### **29. Delivery Extension**

Contractor shall complete delivery within the time specified in the contract. However, Contractor will not be held responsible for delays due to reasons beyond his control, provided he submits written notification with justification of such delays prior to the delivery deadline. This notification shall be submitted to the PCB and shall include documentation evidencing that the delay was, in fact, due to reasons beyond the Contractor's control and shall specify a revised delivery date.

No delivery extension will be considered without proper documentation.

## **PAYMENT**

### **30. Invoicing**

Invoice should reference both the IFB and contract numbers. Delivery receipt indicating the IFB and Contract numbers, signed and dated by DOE personnel, and the original plus one (1) copy of invoice shall be forwarded to Pearl Harbor Kai Elementary School at the above address.

### **31. Payment**

Section 103-10, HRS, provides that the State shall have thirty (30) calendar days after receipt of invoice or satisfactory completion of contract to make payment. For this reason, the DOE may reject any bid submitted with a condition requiring payment within a shorter period. Further, the DOE may reject any bid submitted with a condition requiring interest payments greater than that allowed by §103-10, HRS, as amended.

The DOE will not recognize any requirement established by the Contractor and communicated to the DOE after award of the contract, which requires payment within a shorter period or interest payment not in conformance with statute.

## **APPROVALS**

### **32. Authority of the DOE**

The DOE shall decide all questions which may arise as to the work performed, as to the manner of such performance, as to the interpretation of any term, condition or provision, as to the applicability and interpretation of any law, rule or regulation, policies and procedures, as to compensation, or additional reason to service, and as to any other matter which may arise under the Contract. The decision of the DOE in such matters shall be final provided that decision is not in violation of law and not arbitrary, capricious or characterized by abuse of discretion.

**33. State's General Conditions**

Nothing in the Special Conditions shall supersede the General Conditions attached hereto. The Special Conditions shall serve to supplement the General Conditions, except where a conflict exists between the General Conditions and Special Conditions, in which case the Special Conditions shall apply.

**34. Approvals**

Any agreement arising out of this offer may be subject to the approval of the Department of the Attorney General as to form, and is subject to all further approvals, including the approval of the Governor, required by statute, regulation, rule, order, or other directive.



**CERTIFICATION OF COMPLIANCE FOR FINAL PAYMENT**  
**(Reference §3-122-112, HAR)**

**Reference:** \_\_\_\_\_  
(Contract Number) (Contract Title)

\_\_\_\_\_ affirms it is in  
(Company Name)  
compliance with all laws, as applicable, governing doing business in the State of Hawaii to  
include the following:

1. Chapter 383, HRS, Hawaii Employment Security Law – Unemployment Insurance;
2. Chapter 386, HRS, Worker's Compensation Law;
3. Chapter 392, HRS, Temporary Disability Insurance;
4. Chapter 393, HRS, Prepaid Health Care Act; and

maintains a "Certificate of Good Standing" from the Department of Commerce and Consumer  
Affairs, Business Registration Division.

\_\_\_\_\_ further  
(Company Name)

acknowledges that making a false statement shall cause its suspension and may cause its  
debarment from future awards of contracts.

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## GENERAL CONDITIONS

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## GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
  - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
  - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
  - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
  - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
  - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
  - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
  - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
  - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
  - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
  - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
  - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
  - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
    - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
  - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
  - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

### 13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
  - (A) Contract prices for goods or services accepted under the Contract;
  - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
  - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
  - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the



total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:

- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
- (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
- (C) Within such further time as may be allowed by the Agency procurement officer in writing.

- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;

- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and

- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
  - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
  - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
    - (A) Changes in the work within the scope of the Contract; and
    - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
  - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
  - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
  - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
  - g. CPO approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 or ten per cent (10%) of the initial contract price, whichever increase is higher, must receive the prior approval of the CPO.
  - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
  - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
  - (2) Method of delivery; or
  - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
  - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
  - (2) By unit prices specified in the Contract or subsequently agreed upon;
  - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
  - (4) In such other manner as the parties may mutually agree; or
  - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
  - (1) Description of performance (Attachment 1);
  - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
  - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
  - (5) Method of shipment or packing of supplies; or
  - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
  - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
  - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
  - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
  - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
  - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
  - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-205.5, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
  - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
  - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
  - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
  - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:



- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.